

1 THE HONORABLE JOHN C. COUGHENOUR
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DAVID J. DEARINGER, et al.,

11 Plaintiffs,

12 v.

13 ELI LILLY AND COMPANY,

14 Defendant.

CASE NO. C21-0060-JCC

ORDER

15 This matter comes before the Court on Plaintiffs' motion to compel the production of
16 documents (Dkt. No. 42). Having thoroughly considered the briefing and the relevant record, the
17 Court DENIES the motion for the reasons explained herein.

18 Plaintiffs David and Ganna Dearinger filed a complaint *pro se* alleging Mr. Dearinger
19 suffered a paralytic stroke after taking the medication Cialis manufactured by Defendant. (Dkt.
20 No. 10.) Plaintiffs assert claims for liability under the Washington Product Liability Act and
21 common law. (*Id.* at 7–12.) On September 16, 2022, the parties held a Rule 26 conference
22 telephonically but have yet to finalize a Joint Status Report or Discovery Plan. (Dkt. No. 43 at 2,
23 8.)

24 Plaintiffs now move the Court to enter an order compelling Defendant to comply with
25 Plaintiffs' Requests for Production ("RFPs"). (Dkt. No. 42.) Plaintiffs state they have served the
26 RFPs on Defendant twice, but Defendant has ignored the requests. (Dkt. No. 42 at 4.) In

1 response, Defendant states that Plaintiffs' RFPs were served improperly over email and that
2 Plaintiffs made no attempt to meet and confer before filing their motion to compel. (Dkt. No. 43
3 at 2, 4.)

4 A motion to compel "must include a certification that the movant has in good faith
5 conferred or attempted to confer with the person or party failing to make disclosure or discovery
6 in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). A good faith effort to
7 confer requires a face-to-face meeting or a telephone conference. LCR 37(a)(1). If a movant fails
8 to include a certification, a court "may deny the motion without addressing the merits of the
9 dispute." *Id.* The meet and confer requirement encourages parties to work together to resolve
10 discovery conflicts before involving the Court. Here, Plaintiffs have failed to certify that they
11 attempted to meet and confer with Defendant before filing this motion to compel.

12 Additionally, discovery papers are "required to be served on a party, unless the court
13 orders otherwise." Fed. R. Civ. P. 5(a)(C). Rule 5(b)(2) outlines various methods to effectuate
14 service including by mail, by filing with the court's electronic-filing system, or "by any other
15 means that the person consented to in writing." Plaintiffs' attempts to email their RFPs do not
16 constitute proper service because they have not obtained Defendant's written consent to do so.¹
17 Because Plaintiffs have not properly served the RFPs, the Court cannot compel Defendant to
18 respond at this time.²

19 For the foregoing reasons, Plaintiffs' motion to compel (Dkt. No. 42) is DENIED.

20 //

21 _____
22 ¹ Defendants appear to indicate they would be willing to enter into an electronic service
23 agreement pursuant to Rule 5(b)(2)(F). (Dkt. No. 43 at 6.) Although not obliged to do so,
24 Plaintiffs may consider entering into such an agreement to avoid future issues related to service.

25 ² Plaintiffs state in their reply that they have mailed the RFPs to Defendant. (Dkt. No. 45 at 5.)
26 However, because Defendant had not yet been served at the time this motion to compel was
filed, the Court will give Defendant an opportunity to reply prior to any Court intervention.

1 DATED this 7th day of December 2022.
2
3
4
5
6

John C. Coughenour
UNITED STATES DISTRICT JUDGE

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26